

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MARCELLOR HACKNEY, )  
Petitioner, )  
v. ) No. 4:07-CV-2017 CAS  
DON ROPER, )  
Respondent. )

**ORDER**

This matter is before the Court on state prisoner Marchellor Hackney's action pursuant to 28 U.S.C. § 2254. This case was referred to United States Magistrate Judge Lewis M. Blanton for report and recommendation on all dispositive matters and for final disposition on all non-dispositive matters, pursuant to 28 U.S.C. § 636(b).

On September 24, 2010, Judge Blanton filed a Report and Recommendation of United States Magistrate Judge which recommended that Hackney's petition for writ of habeas corpus be denied. Judge Blanton concluded that the first three grounds raised by petitioner were procedurally barred because although movant raised them in his state court motion for post-conviction relief, he did not raise them on appeal from the denial of that motion. Judge Blanton concluded the fourth and final ground failed on the merits. Judge Blanton also reviewed the merits of the three procedurally barred claims and concluded those failed on the merits as well.

Petitioner sought and was granted additional time to file objections to the Report and Recommendation. In the objections, petitioner argues, among other things, that his procedural default should be excused because it was caused by the ineffective assistance of and abandonment by post-conviction counsel. The Eighth Circuit has held, however, that any error by post-conviction

counsel cannot be “cause” to excuse procedural default because there is no constitutional entitlement to post-conviction counsel. Malone v. Vasquez, 138 F.3d 711, 719 (8th Cir. 1998) (citing Coleman v. Thompson, 501 U.S. 722, 731-32 (1991)). Petitioner has therefore not suggested a basis upon which his procedural default should be excused, and grounds one through three are procedurally barred.

The Court has carefully reviewed petitioner’s objections and the entire record of this matter. Following de novo review, the Court concurs in the recommendation of the Magistrate Judge.

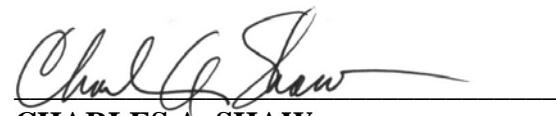
Accordingly,

**IT IS HEREBY ORDERED** that the Report and Recommendation of United States Magistrate Judge is **sustained, adopted** and **incorporated** herein. [Doc. 23]

**IT IS FURTHER ORDERED** that Marchellor Hackney’s Petition for Writ of Habeas Corpus pursuant to Title 28 U.S.C. § 2254 is **DENIED**. [Doc. 1]

**IT IS FURTHER ORDERED** that this matter is **DISMISSED**, with no further action to take place herein.

An appropriate judgment will accompany this order.



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CHARLES A. SHAW  
UNITED STATES DISTRICT JUDGE

Dated this 15th day of November, 2010.